



## HIGH COURT OF AUSTRALIA

17 December 2025

HUNT LEATHER PTY LTD ACN 000745960 & ANOR v TRANSPORT FOR NSW  
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ABN 18804239602  
[2025] HCA 53

Today, the High Court unanimously allowed two appeals from judgments of the Court of Appeal of the Supreme Court of New South Wales. The appeals concerned the tort of private nuisance and the intersection of that tort with the exercise of powers by statutory authorities in the context of the construction of the Sydney Light Rail.

The proceedings were brought by the appellants ("Hunt Leather and Ancio Investments") as the lead plaintiffs on behalf of all persons who hold or have held rights to land in the vicinity of the Sydney Light Rail and who claim to have suffered loss or damage by reason of a substantial interference with their enjoyment of land. The respondent, Transport for New South Wales ("TfNSW"), planned and procured the construction of the Sydney Light Rail, although it did not perform the construction works.

The trial judge in the Supreme Court of New South Wales upheld, in part, claims for private nuisance by Hunt Leather and Ancio Investments. The Court of Appeal unanimously allowed an appeal by TfNSW, concluding that no nuisance had been committed by TfNSW. Both the trial judge and the Court of Appeal dismissed the aspect of the claims by Hunt Leather and Ancio Investments that the award of damages should include compensation for the litigation funder's commission.

The High Court emphasised that the principles of private nuisance balance a plaintiff's right to land with the liberties of a defendant to use other land. As such, a majority of the High Court concluded that liability in private nuisance arises from a substantial interference with a plaintiff's right to land where the interference is with ordinary enjoyment of land if: (i) a defendant uses their land for a purpose that is not common and ordinary; or (ii) the defendant's use of land does not reasonably minimise the extent of the substantial interference with the plaintiff's ordinary enjoyment of land. Applying that test, a majority of the High Court held that there had been a substantial interference with the ordinary enjoyment of land by Hunt Leather and Ancio Investments and that TfNSW had failed to discharge its onus of establishing that it planned and procured the construction of the Sydney Light Rail in a manner that reasonably minimised the extent of that substantial interference. The High Court rejected TfNSW's contention that s 43A of the *Civil Liability Act 2002* (NSW) applied to defeat the liability of TfNSW in private nuisance. TfNSW's asserted defence of statutory authority was also unsuccessful.

The High Court unanimously held that the damages to which Hunt Leather and Ancio Investments were entitled should not include the reasonable costs they incurred in obtaining litigation funding.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*